arguments against waiver applies, however, to offenses of the sort which, at the time of the adoption of the constitution, were dealt with summarily by justices of the peace, or by courts of special sessions.[8] For these minor offenses, not being formerly triable by a jury, are usually considered not to have been intended to be within the constitutional guaranty,[9] and hence not to be within the scope of the alleged constitutional policy against waiver;[10] and there is sufficient precedent to give a court authorization in such cases to be the sole tribunal.

Moreover, a statute which provides that issues of fact shall be tried by a jury is held, in a recent case in a jurisdiction where the provisions of the Constitution of the United States apply, to prohibit waiver of jury. *In re McQuown*, 91 Pac. 689 (Okl.). Where there is such a statute there can be no other tribunal even for minor offenses unless further provision is made.[11] Without such statute the two sections of the Constitution involved,[12] construed together, have the force, not of those state constitutions which prescribe the exclusive use of trial by jury, but of those which merely protect the right to such trial.[13] Consequently a federal statute permitting waiver is constitutional;[13] and in a federal court, without such statute, a jury may be waived in the trial of a minor offence.[10]

The sole legal question, then, is always one of construction, not of policy. From the point of view of public policy, it may be said that waiver of jury trial conduces to efficient and expeditious criminal administration; but on the other hand, it endangers the existence of the jury system. A plea of guilty, not raising an issue to be tried, does not waive the right of trial by jury.[14] Nor are the above considerations applicable to the question whether a defendant may elect to be tried by a jury consisting of other than twelve men; a statute permitting waiver of the whole jury does not permit waiver of one juror.[15]

RECENT CASES.

BANKRUPTCY — EXEMPTIONS — CLAIM OF EXEMPTION OUT OF PROCEEDS OF SALE. — A bankrupt absconded leaving no property except a quantity of liquor. His wife waived her right to claim $500 worth of the liquor as exempt, but claimed in lieu thereof $500 from the proceeds of its sale. Her reason was that if she sold the liquor she would have to pay a tax which would reduce the value of her exemption to less than $200. *Held*, that she has a right to claim $500 from the proceeds. *In re Luby*, 155 Fed. 659 (Dist. Ct., S. D. Oh., E. D.).

By the great weight of authority statutes of exemption should be liberally construed. *Y. C. N. Bank* v. *Carpenter*, 119 N. Y. 550; *In re McManus*, 87 Cal. 292. Where a bankrupt makes an assignment for the benefit of creditors with a reservation of exemptions from the proceeds of the property assigned, the assignment is generally held not to be void as a fraud on the creditors. *Banking Co.* v. *Whitaker*, 110 N. C. 345; *contra*, *King* v. *Ruble*, 54 Ark. 418. Fur-

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[8] City of St. Charles *v.* Hackman, 133 Mo. 634. *Contra*, State *v.* Maine, 27 Conn. 281.

[9] Murphy *v.* People, 2 Cow. (N. Y.) 815.

[10] Schick *v.* United States, 195 U. S. 65. But see dissenting opinion.

[11] Bond *v.* State, 17 Ark. 290. But see People *v.* Smith, 9 Mich. 193.

[12] Art. III, § 2; Amend. VI.

[13] Belt *v.* United States, 4 D. C. App. Cas. 25.

[14] West *v.* Gammon, 98 Fed. 426.

[15] Brown *v.* State, 16 Ind. 496. *Contra*, State *v.* Wells, 69 Kan. 792. *Cf.* 9 HARV. L. REV. 353.

ther, it has been held that where there is a lien on the debtor's property, the property may be sold and exemptions claimed from the proceeds after payment of the lien debt. *Darby* v. *Rouse*, 75 Md. 26. The former line of decisions shows that the courts are not averse to allowing a claim of exemptions out of proceeds. The reason for the decision in the latter line of cases is that unless the debtor can claim from the proceeds, his right to exemptions will be defeated. The court applied the same reasoning to the present case, and to keep the wife's exemptions from being substantially defeated, allowed her to claim from the proceeds. In view of the very liberal construction almost universally given to exemption statutes the result seems correct.

BANKRUPTCY — STATE INSOLVENCY LAWS — MERGER OF CLAIM IN SUBSEQUENT JUDGMENT. — The Massachusetts court, under statutory power, instituted receivership proceedings against the defendant corporation to close its affairs. Thereafter, in another court, the petitioners carried to judgment against the defendant a debt action commenced prior to the receivership. The petitioners then sought to enforce their claim in the receivership proceedings. *Held*, that the petitioners may prove their original claim only. *Atty.-Gen.* v. *Supreme Council A. L. H.*, 81 N. E. 966 (Mass.).

In Massachusetts claims arising after the institution of insolvency proceedings are not provable against the insolvent's estate. MASS. REV. LAWS, c. 163, § 31. Under this heading courts in Massachusetts and Maine, in proceedings under their state insolvency laws, ordinarily include claims which, though valid when insolvency proceedings are commenced, are thereafter pursued to judgment. *Sampson* v. *Clark*, 2 Cush. (Mass.) 173; *Emery, Appellant*, 89 Me. 544. The courts reason that the original claim merges completely in the judgment debt, and that the creditor elects this judgment right against his debtor's future assets in place of the former claim against the insolvent estate. The court excepts the present case from this doctrine because here, the debtor corporation being dissolved, the creditor cannot be said to seek future assets. While the result reached is just, the court in considering the creditor's intent fails to dispose satisfactorily of the merger question, the opinion herein reflecting a recent tendency to curtail or ignore that technical theory. *Murphy* v. *Manning*, 134 Mass. 488. The merger doctrine is not applied in proceedings under the National Bankruptcy Act. *Boynton* v. *Ball*, 121 U. S. 457. The result is the application of different rules to state and federal insolvency proceedings in Maine and Massachusetts. This inconsistency is apparently confined to these two states. See *In re Stansfield*, 4 Sawy. (U. S.) 334; *Imlay* v. *Carpentier*, 14 Cal. 173.

BILLS AND NOTES — FICTITIOUS PAYEE — EFFECT OF DRAWER'S INTENTION. — The plaintiff, on the fraudulent representation of A and to pay for shares of stock alleged to be for sale by B, drew a check payable to the order of B, who was ignorant of the transaction and had no such stock. A then indorsed the check, using the payee's name, to the defendant bank, a *bona fide* purchaser for value. The defendant collected the amount from the plaintiff's bank, which amount the plaintiff seeks to recover. *Held*, that the defendant is not entitled to the proceeds of the check. *Macbeth* v. *North and South Wales Bank*, 24 T. L. R. 5 (Eng., Ct. App., Oct. 16, 1907).

The Bills of Exchange Act, 1882, s. 7, subs. 3, provides that "where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer." In the United States the intention or knowledge of the drawer is decisive of the fictitiousness of a named payee, irrespective of the actual existence of a person of such name. *Shipman* v. *State Bank*, 126 N. Y. 318; *Armstrong* v. *Pomeroy Nat'l Bank*, 46 Oh. St. 512. The English courts, by a strict construction, consider the drawer's intention immaterial if the named payee is, in fact, non-existing. *Clutton* v. *Attenborough*, [1897] A. C. 90; see 10 HARV. L. REV. 449. If, however, the drawer intends payment to be made to an actual person, though unknown to the latter, as in the present case, the check is not payable to bearer and the drawer can recover for payment contrary to direction. *Vinden* v. *Hughes*, [1905] 1 K. B. 795. This is clearly correct.